

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CLINT E. CHANTHAVONG

Pharmacist License No. RPH 46916

Respondent.

Case No. 3114

OAH No. L2007120482

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on May 21, 2008.

It is so ORDERED on April 21, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


WILLIAM POWERS
Board President

BEFORE THE
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In the Matter of the Accusation Against:

Case No. 3114

CLINT E. CHANTAVONG,

OAH No. N2007120482

Respondent.

PROPOSED DECISION

Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 11, 2008, in Fresno, California.

Elena L. Almanzo, Deputy Attorney General, represented the complainant.

Clint E. Chanthavong, respondent, represented himself.

The matter was submitted on March 11, 2008.

FACTUAL FINDINGS

1. Complainant, Virginia Herold, Executive Officer of the Board of Pharmacy (Board), made the Accusation, while acting in her official capacity.

2. On January 31, 2003, the Board issued Pharmacy Technician Number TCH 46977 to respondent. The license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2008, unless renewed.

3. On March 9, 2007, in the Superior Court of California, County of Fresno, respondent was convicted on his plea of nolo contendere of violating Health and Safety Code section 11375, subdivision (b)(1), possession of a controlled substance for sale, a felony.

Respondent was sentenced to wear an ankle monitor for two months. He was placed on formal probation for five years, ordered to submit to drug testing and to pay a \$300 fine.

The facts and circumstances giving rise to respondent's conviction are as follows: On September 26, 2006, the Clovis Police Department Gang Response Team served a search warrant on respondent's residence. In respondent's bedroom, the officers found various controlled substances. The officers questioned respondent about the controlled substances and respondent admitted that he worked at the Community First Pharmacy in Fresno, California, and that he had stolen the drugs Vicodin, Hydrocodone, Diazepam, and Norco, from the pharmacy.

Respondent testified that in the past he ingested some of the drugs he stole from the pharmacy, as well as provided drugs to his friends to use.

Matters in Aggravation

4. Respondent currently works as a pharmacy technician for Long's Drugs, at the Fig Garden location, in Fresno, California. Despite being obligated to do so, respondent failed to notify Long's Drugs of his felony conviction.

Matters in Mitigation

5. Respondent grew up in an abusive family relationship, his father having been recently incarcerated for "beating up" respondent and his mother.

Respondent no longer associates with the same people with whom he associated at the time of his arrest.

Costs

6. Respondent failed produce persuasive evidence regarding mitigation, rehabilitation, or the imposition of a measure of discipline less than the outright revocation of his license. However, respondent did produce persuasive evidence that he incurred substantial legal costs in defending the underlying criminal action, and he is presently suffering from financial hardship. The Board did not rebut this evidence or show that respondent has the financial wherewithal to pay the Board's costs.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 490 and 4300 provides that the Board may revoke the license of a licensee convicted of a crime substantially related to the qualifications, functions, or duties for which the license was issued.

2. Business and Professions Code section 4060 provides that no person shall possess any controlled substance without a lawful prescription.

3. Business and Professions Code section 4022 defines the term "dangerous drug." The definition includes drugs that require a lawful prescription.

4. Business and Professions Code section 4301 provides that the Board may revoke the license of a licensee who is guilty of unprofessional conduct. Unprofessional conduct includes the commission of an act involving dishonesty, fraud, or deceit; violation of laws regulating controlled substances or dangerous drugs; the conviction of any felony involving the use, consumption, or self administration of any dangerous drug; the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee; and the violation of federal and state laws and regulations governing the practice of pharmacy. (Bus. & Prof. Code, § 4301, subds. (f), (j) (k) (l) & (O).)

5. Business and Professions Code section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the matter.

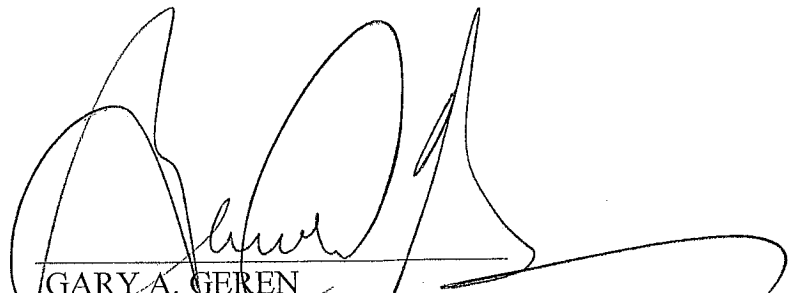
Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32, sets forth four factors required to be considered when deciding whether to reduce or eliminate costs: (1) Whether the licentiate used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licentiate had a "subjective" good faith belief in the merits of his position; (3) whether the licentiate raised a "colorable challenge" to the proposed discipline; and (4) whether the licentiate had the financial ability to make payments.

6. As set forth in Factual Finding 6, and Legal Conclusion 5, respondent should not bear the costs sought by the Board.

ORDER

Pharmacy Technician License Number TCH 46977 issued to respondent Clint Chantavong is hereby revoked.

DATED: March 13, 2008


GARY A. GEREN
Administrative Law Judge
Office of Administrative Hearings

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of the State of California
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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No.

12 CLINT E. CHANTHAVONG
13 5215 W. Holland Ave.
14 Fresno, CA 93722

Respondent.

A C C U S A T I O N

15
16 Complainant alleges:

17 PARTIES

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about January 31, 2003, the Board of Pharmacy issued Pharmacy
21 Technician Number TCH 46977 to Clint E. Chanthavong (Respondent). The Pharmacy
22 Technician was in full force and effect at all times relevant to the charges brought herein and will
23 expire on July 31, 2008, unless renewed.

24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code unless otherwise indicated.

28 //

1 4. Section 4300 of the Code states in pertinent part:
2 "(a) Every license issued may be suspended or revoked.
3 "(b) The board shall discipline the holder of any license issued by the board,
4 whose default has been entered or whose case has been heard by the board and found guilty, by
5 any of the following methods:
6 "(1) Suspending judgment.
7 "(2) Placing him or her upon probation.
8 "(3) Suspending his or her right to practice for a period not exceeding one year.
9 "(4) Revoking his or her license.
10 "(5) Taking any other action in relation to disciplining him or her as the board in
11 its discretion may deem proper.
12 5. Section 125.3 of the Code states, in pertinent part, that the Board may
13 request the administrative law judge to direct a licentiate found to have committed a violation or
14 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
15 and enforcement of the case.
16 6. Section 4022 of the Code states
17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
18 self-use in humans or animals, and includes the following:
19 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
20 without prescription," "Rx only," or words of similar import.
21 "(b) Any device that bears the statement: "Caution: federal law restricts this
22 device to sale by or on the order of a _____," "Rx only," or words of similar import, the
23 blank to be filled in with the designation of the practitioner licensed to use or order use of the
24 device.
25 "(c) Any other drug or device that by federal or state law can be lawfully
26 dispensed only on prescription or furnished pursuant to Section 4006."
27 7. Section 4060 of the Code states:
28 "No person shall possess any controlled substance, except that furnished to a

1 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
2 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a
3 certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section
4 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to
5 Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
6 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall
7 not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
8 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
9 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
10 labeled with the name and address of the supplier or producer.

11 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner,
12 a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
13 and devices."

14 8. Section 4301 of the Code states in pertinent part:

15 "The board shall take action against any holder of a license who is guilty of
16 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
17 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
18 following:

19 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
20 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
21 otherwise, and whether the act is a felony or misdemeanor or not.

22 "(j) The violation of any of the statutes of this state, or any other state, or of the
23 United States regulating controlled substances and dangerous drugs.

24 "(k) The conviction of more than one misdemeanor or any felony involving the
25 use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
26 combination of those substances.

27 "(l) The conviction of a crime substantially related to the qualifications, functions,
28 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

(commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

9. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the

1 Penal Code."

2 10. "Valium," a brand of diazepam, is a Schedule IV controlled substance as
3 designated by Health and Safety Code section 11057(d)(9).

4 11. "Vicodin" is a compound consisting of 5 mg. hydrocodone bitartrate also
5 known as dihydrocodeinone, a Schedule III controlled substance as designated by Health and
6 Safety Code section 11056(e)(4), and 500 mg. acetaminophen per tablet.

7 12. "Norco" is a compound consisting of 10 mg. hydrocodone bitartrate also
8 known as dihydrocodeinone, a Schedule III controlled substance as designated by Health and
9 Safety Code section 11056(e)(4); and 325 mg. acetaminophen per tablet.

10 FIRST CAUSE FOR DISCIPLINE

11 (Conviction of a Crime)

12 13. Respondent is subject to disciplinary action under section 490 and 4301
13 subds. (k) and (l) in that he was convicted of a crime substantially related to the practice of a
14 pharmacy technician. The circumstances are as follows:

15 14. On or about March 9, 2007, in People v. Clint Eastwood Changthavong
16 Superior Court of California, County of Fresno; Case No. F0690774, respondent was convicted
17 on his plea of nolo contendere to a violation of Health and Safety Code section 11375(b)(1) for
18 possession of a controlled substance for sale, to wit, Diazepam (Valium).

19 SECOND CAUSE FOR DISCIPLINE

20 (Possession of a Controlled Substance)

21 15. Respondent is subject to disciplinary action under section 4301 subds.(j)
22 and (o) in that he illegally possessed controlled substances. The circumstances follow:

23 A.. On or about September 28, 2006, in an interview with the Clovis Police
24 Department, respondent admitted that when he worked at Community First
25 Pharmacy in Fresno, California, he had stolen a bottle from the pharmacy which
26 contained 500 tablets of Vicodin, Hydrocodone 5mg/Acetaminophen 500 mg..

27 B. During the same interview, Respondent admitted that he had taken a bottle of
28 Diazepam from the pharmacy from the pharmacy shelf that contained filled but

1 unclaimed prescriptions.

2 C. Respondent also admitted that he had stolen Norco from the pharmacy.

3 THIRD CAUSE FOR DISCIPLINE

4 (Dishonest Acts)

5 16. Respondent is subject to disciplinary action under section 4301 subd. (f) in
6 that he was dishonest or fraudulent in stealing controlled substances from the Community First
7 Pharmacy where he was employed as a pharmacy technician, as set forth more fully above in
8 paragraph 15 A through C.

9 PRAYER

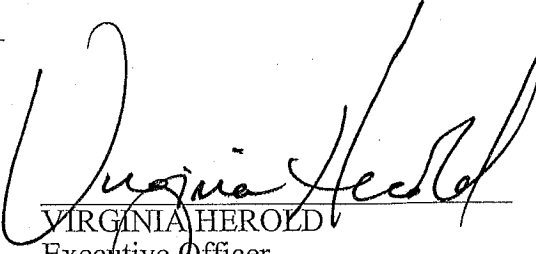
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

12 A. Revoking or suspending Pharmacy Technician Number TCH 46977,
13 issued to Clint E. Chanthavong

14 B. Ordering Clint E. Chanthavong to pay the Board of Pharmacy the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3; and

17 C. Taking such other and further action as deemed necessary and proper.

18
19 DATED: 10/22/07

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22 
23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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